

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DISTRICT**

**KRISTIN KISER, et al.,**

**Plaintiffs,**

**v.**

**KURT OLSEN,**

**Defendant.**

**Case No. 2:14-cv-2313**

**JUDGE GREGORY L. FROST**

**Magistrate Judge Terence P. Kemp**

**OPINION AND ORDER**

This matter is before the Court for consideration of Defendant Kurt Olsen's motion for appointment of a special trustee. (ECF No. 2.) In this motion, Defendant asks the Court to remove both him and his sister, Plaintiff Kristin Kiser, as co-trustees of a trust. The trust in question was created by the siblings' mother, Ann Olsen, who died in 2012. ("Olsen Trust," ECF No. 2-1.) Defendant represents that he and Kristin Kiser are the trust's only trustees and its only beneficiaries.

Defendant seeks removal of both siblings as trustees because, *inter alia*, they are unable to agree how to best serve the interests of the beneficiaries of the Olsen Trust. Defendant therefore seeks removal pursuant to Ohio Revised Code § 5807.06(B), which provides:

(B) The court may remove a trustee for any of the following reasons:

- (1) The trustee has committed a serious breach of trust;
- (2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;
- (3) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries.

Defendant requests that the Court “appoint a single, neutral trustee to administer the [Olsen] Trust in accordance with its terms.” (ECF No. 2, at PAGEID # 50.)

Plaintiffs (Kristin Kiser and her husband, William Kiser) did not respond to Defendant’s motion. Pursuant to Southern District of Ohio Local Civil Rule 7.2(a)(2), Plaintiff’s failure to file a memorandum in opposition to Defendant’s motion is grounds for granting the motion. Accordingly, and because the siblings’ lawsuits against each other<sup>1</sup> suggest that § 5807.06(B)(2) is satisfied in this case, the Court **GRANTS** Defendant’s motion and removes Defendant and Kristin Kiser as co-trustees of the Olsen Trust.

Because Defendant and Kristin Kiser are the sole trustees of the Olsen Trust, a vacancy exists that must be filled. Pursuant to Ohio Revised Code § 5807.04(C):

A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

- (1) By a person designated in the terms of the trust to act as successor trustee;
- (2) By a person appointed by someone designated in the terms of the trust to appoint a successor trustee;
- (3) By a person appointed by unanimous agreement of the qualified beneficiaries;
- (4) By a person appointed by the court.

Sections 5807.04(C)(1) and (2) are inapplicable in this case. Accordingly, pursuant to § 5807.04(C)(3), Defendant and Kristin Kiser may appoint a new trustee by unanimous agreement. Defendant and Kristin Kiser shall have **ten (10) days** from the date of this Opinion and Order to propose a neutral trustee to whom they unanimously agree.

Should Defendant and Kristin Kiser be unable to agree to a new trustee, or if the Court does not receive a joint submission proposing a new trustee within **ten (10) days** of the date of

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<sup>1</sup> In addition to the pending lawsuit, another lawsuit involving the same subject matter (which Defendant filed against his sister) is pending in the Superior Court of the State of California, County of Alameda.

this Opinion and Order, the Court shall appoint Mr. Kenneth Ryan of Eslocker, Oremus & Ryan, LPA, or another similarly qualified individual, to serve as the neutral trustee to administer the Olsen Trust in accordance with its terms. Should either party object to Mr. Ryan's appointment, that party shall file an objection within **ten (10) days** of the date of this Opinion and Order.

**IT IS SO ORDERED.**

/s/ Gregory L. Frost  
**GREGORY L. FROST**  
**UNITED STATES DISTRICT JUDGE**